



NO JS-6

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

RSPE AUDIO SOLUTIONS, INC., a California corporation,	)	Case No. CV 12-06863 DDP (PJWx)
	)	
Plaintiff,	)	
	)	
v.	)	<b>ORDER GRANTING DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS</b>
	)	
VINTAGE KING AUDIO, INC., a	)	
Michigan corporation; CHRIS	)	
BOLITHO, an individual;	)	
ROBERT ALEXANDER, an	)	[Dkt. Nos. 9, 10]
individual,	)	
	)	
Defendants.	)	
	)	
	)	

Presently before the court is Defendant Vintage King Audio Inc. ("Vintage King")'s Motion to Dismiss, in which Defendants Chris Bolitho and Robert Alexander join. Having considered the submissions of the parties, the court grants the motion and adopts the following order.

**I. Background**

Plaintiff RSPE Audio Solutions, Inc. ("RSPE") provides professional audio and video equipment and consulting and engineering services to its clients. (First Amended Complaint

1 ("FAC") ¶ 8.) RSPE maintains confidential information, such as  
2 customer lists, employee compensation terms, deal proposals, and  
3 the like, that RPSE alleges constitute trade secrets. (FAC ¶ 10.)

4 Defendants Bolitho and Alexander were, until May 2012, RSPE  
5 employees. (FAC ¶ 14.) Bolitho had special access to RSPE's  
6 confidential information. (FAC ¶ 15.) RSPE alleges that on April  
7 19, 2012, Bolitho and Alexander accessed RSPE systems from  
8 unauthorized computers and made unauthorized copies of RSPE's trade  
9 secrets. (FAC ¶¶ 13-17.) RSPE further alleges that Bolitho and  
10 Alexander used RSPE secrets to benefit RSPE's competitor, Defendant  
11 Vintage King. (FAC ¶ 17.) Bolitho also coopted RSPE's e-mail  
12 system and tampered with RSPE's online accounts. (FAC ¶¶ 21.) Two  
13 weeks after accessing RSPE's trade secrets, Bolitho and Alexander  
14 left RSPE and began working for Vintage King. (FAC ¶¶ 15-17, 21.)

15 RSPE filed suit against Bolitho, Alexander, and Vintage King  
16 in California state court. RSPE's FAC alleges six causes of  
17 action, including the First Cause of Action for Misappropriation of  
18 Trade Secrets in violation of California's Uniform Trade Secrets  
19 Act ("CUTSA"), Civil Code Section 3426, et seq. The Second, Third,  
20 and Fourth Causes of Action allege intentional interference with  
21 prospective economic advantage, unfair business practices, and  
22 aiding and abetting misappropriation of trade secrets,  
23 respectively.<sup>1</sup> Bolitho and Alexander removed to this court.  
24 Vintage King now moves for judgment on the pleadings as to the  
25 Second, Third, and Fourth Causes of Action.

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28 <sup>1</sup> The FAC also alleges two additional causes of action not at  
issue here.

## II. Legal Standard

A motion for judgment on the pleadings under Federal Rule of Procedure 12(c) is functionally identical to a motion to dismiss brought under Rule 12(b)(6). Cafasso v. Gen. Dynamics C4 Sys., Inc., 637 F.3d 1047, 1055 n.4 (9th Cir. 2011). The two are, therefore, decided by the same standard. Id. A complaint will survive either motion when it contains "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). When considering a Rule 12(b)(6) motion, a court must "accept as true all allegations of material fact and must construe those facts in the light most favorable to the plaintiff." Resnick v. Hayes, 213 F.3d 443, 447 (9th Cir. 2000). Although a complaint need not include "detailed factual allegations," it must offer "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." Iqbal, 556 U.S. at 678. Conclusory allegations or allegations that are no more than a statement of a legal conclusion "are not entitled to the assumption of truth." Id. at 679. In other words, a pleading that merely offers "labels and conclusions," a "formulaic recitation of the elements," or "naked assertions" will not be sufficient to state a claim upon which relief can be granted. Id. at 678 (citations and internal quotation marks omitted).

"When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement of relief." Id. at 679. Plaintiffs must allege "plausible grounds to infer" that their claims rise "above the speculative level." Twombly, 550 U.S. at

1 555. "Determining whether a complaint states a plausible claim for  
2 relief" is a "context-specific task that requires the reviewing  
3 court to draw on its judicial experience and common sense." Iqbal,  
4 556 U.S. at 679.

### 5 **III. Discussion**

6 California's Uniform Trade Secrets Act preempts, displaces,  
7 and supercedes all "claims based on the same nucleus of facts as  
8 trade secret misappropriation." K.C. Multimedia, Inc. v. Bank of  
9 America Tech. & Operations, Inc., 171 Cal. App. 4th 939, 962  
10 (2009). CUTSA, therefore, "provides the exclusive civil remedy for  
11 conduct falling within its terms . . . ." Silvaco Data Sys. v.  
12 Intel Corp., 184 Cal. App. 4th 210, 236 (2010). CUTSA does not  
13 affect contractual remedies or "civil remedies that are not based  
14 upon misappropriation of a trade secret." Cal. Civ. Code §  
15 3426.7(b) (emphasis added).

16 Here, RSPE's First Cause of Action under CUTSA alleges that  
17 "Defendants' conduct as alleged in this Complaint constitutes  
18 misappropriation of trade secrets pursuant to [CUTSA]." (FAC ¶  
19 24.) Vintage King argues that the Second, Third, and Fourth Causes  
20 of Action are based upon the same nucleus of facts as the CUTSA  
21 claim, and are therefore preempted by CUTSA.

22 RSPE does not dispute that claims arising out of the same  
23 nucleus of facts as a CUTSA trade secret misappropriation claim are  
24 preempted. Rather, RSPE asserts that it has alleged bad acts  
25 independent of the trade secrets claims. (Opp. at 3.) Indeed,  
26 paragraphs eighteen through twenty-one of the FAC make no mention  
27 of trade secrets. Instead, those paragraphs allege that Bolitho  
28 misdirected e-mails from RSPE clients (FAC ¶ 18), tampered with

1 RSPE's eBay storefront in an attempt to transfer the account to  
2 Vintage King (FAC ¶ 20), and tampered with RSPE's Amazon.com  
3 account (FAC ¶ 21).

4        Though the FAC does incorporate non-trade secret-related  
5 allegations into the Second, Third, and Fourth Causes of action,  
6 such allegations do not serve as the basis of those claims.  
7 Rather, each cause of action at issue here explicitly refers to  
8 RSPE's trade secrets claims. The Second Cause of Action for  
9 Intentional Interference with Prospective Economic Advantage, for  
10 example, alleges that "[Defendants'] conduct was wrongful . . . , as  
11 it also violated the Uniform Trade Secrets Act." (FAC ¶ 34.)  
12 Furthermore, the Second Cause of Action makes no mention of the  
13 alleged e-mail chicanery or internet tampering, but does explicitly  
14 reiterate the value of RSPE's "customer lists, contacts, and  
15 information . . . ," i.e., RSPE's trade secrets. (FAC ¶ 10, 35.)

16        Similarly, the Third Cause of Action for Unfair Business  
17 Practices under California Business and Professions Code Section  
18 17200 specifies that "Defendants' misappropriation of the Trade  
19 Secrets as alleged herein constitutes unfair and/or fraudulent  
20 business practices . . . ." (FAC ¶ 39.) The very description of  
21 the Fourth Cause of Action for Aiding and Abetting Misappropriation  
22 of Trade Secrets and Interference with Economic Advantage reveals  
23 that it, too, is based upon the same nucleus of facts as the CUTSA  
24 claim. Indeed, the Fourth Cause of Action describes  
25 "misappropriation of trade secrets" as the specific wrong  
26 perpetrated against RSPE.

27        While the FAC contains allegations potentially unrelated to  
28 RSPE's trade secrets claim, the Second, Third, and Fourth Causes of

1 Action are based upon the same nucleus of fact as RSPE's CUTSA  
2 claim for misappropriation of trade secrets. The Second, Third,  
3 and Fourth Causes of Action are, therefore, preempted by CUTSA.<sup>2</sup>

4 **IV. Conclusion**

5 For the reasons stated above, Defendant's Motion for Judgment  
6 on the Pleadings is GRANTED, with leave to amend. Any amended  
7 complaint shall be filed within ten days of the date of this order.

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11 IT IS SO ORDERED.

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14 Dated: January 7, 2013

  
DEAN D. PREGERSON  
United States District Judge

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24 <sup>2</sup> RSPE argues that it would be premature to address the  
25 preemption question at this stage, prior to a determination whether  
26 the information at issue here was made property by a provision of  
27 positive law different from CUTSA. See Bryant v. Mattel, Inc., No.  
28 CV 04-9049 DOC, 2010 WL 3705668 at \*21-22 (C.D. Cal. Aug. 2, 2010).  
RSPE has not, however, alleged any facts to support the inference  
that it has a non-trade secret property interest in any of the  
information at issue here. See SunPower Corp. v. SolarCity Corp.,  
No 12-CV-694 LHK, 2012 WL 6160472 at \*14-15 (N.D. Cal. Dec. 11,  
2012).